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09/319,243

08/05/1999

PING LIONG TJOA

2663

23664

7590

09/13/2005

FROHWITTER  
THREE RIVERWAY  
SUITE 500  
HOUSTON, TX 77056

EXAMINER

HAMILTON, LALITA M

ART UNIT

PAPER NUMBER

3624

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/319,243

Applicant(s)

TJOA, PING LIONG

Examiner

Lalita M. Hamilton

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on March 31, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Summary**

On June 18, 2003, an Examiner's Answer was mailed to the Applicant in response to the Appeal Brief filed on March 31, 2003. On November 30, 2004, the case was remanded to the Examiner with comments from the Board of Appeals.

### **Case on Appeal**

On November 30, 2004, the case was remanded to the Examiner with the following comments: "The Examiner shall state whether the limitations of claim 12 calling for the claimed apparatus to have spherical elements and a diameter 'adapted to the palm of the hand' and the total length 'approximately in the range of the length of the should span of the person using it' are 'obvious' in view of Bosko (as per the rejection of paper no.15) or 'disclosed' (and thus fully met) by Bosko (as per the answer). If the Examiner determined that there are no differences between the subject matter of the appealed claim and Bosko, the Examiner shall take appropriate action (e.g., enter a rejection of that claim under 35 U.S.C. 102 as being anticipated by Bosko), or explain why such action has not been taken".

In light of these comments, the Examiner will reopen prosecution and reject claim 12 under 35 U.S.C. 102 as being anticipated by Bosko. A detailed action follows below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 14-16, and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bosko (3,334,899).

Bosko discloses a training apparatus for massing the palms and promoting body bearing motion (may be in any shape or size for all practical reasons on the device of physicians or trainers (col.1, lines 40-45); an intermediate element formed as a rod (12); identical end elements, each situated at a respective end of said intermediate element (10, 11); each end element has a spherical form, the diameter of which is adapted to the palm of the hand of the training person (col.1, lines 35-50—may be any size or shape); a non-discontinuous spherical surface remote from said intermediate element, a turning region and a conversely concave region on its side toward said intermediate element, said turning region making a steady transition into said conversely concave region, wherein the conversely concave region making a steady transition to said intermediate element (fig.5); the total length of the training apparatus is approximately the range of the length of the shoulder span of the person using it (col.5, lines 40-45—short or long bars of any size may be used); the radius of the conversely concave region is approximately equal to the radius of the non-discontinuous spherical surface (col.1, lines 35-50 and col.5, lines 40-45—any size or shape may be used); conversely concave region and said turning region form a smaller minimum diameter than the equivalent of the maximum diameter of the intermediate element (fig.5); intermediate element is cylindrical over a substantial portion of its length (fig.5: 12); training

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apparatus is molded in one piece (fig.1 and 5); and the training apparatus is made of one of: wood, plastic, metal, and stone (col.1, lines 35-50).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko in view of Coallier (5,580,336).

Bosko discloses the invention substantially as claimed; Bosko does not specifically disclose the radius of the spherical surface being between 30 mm and 75mm. Bosko does disclose that any size or shape may be used. Coallier teaches a hand exerciser comprising a radius of the spherical surface being between 30 mm and 75 mm (col.3, lines 25-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a radius of the spherical surface being between 30 mm and 75 mm, as taught by Coallier into the invention

disclosed by Bosko, to provide a device having a size adequate for massaging as directed by a physician/therapist.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosko on view of Jackson (4,002,163).

Bosko discloses the invention substantially as claimed; however, Bosko does not disclose a minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm or the total length of the apparatus being between 200 and 1200 mm. Bosko does disclose that the device may be any size or shape. Jackson teaches an exerciser and roller massage comprising a minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm (col.2, lines 15-36) and the total length of the apparatus being between 200 and 1200 mm (col.2, lines 15-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a minimum diameter of the conversely concave region and said turning region in the range of between 17 mm and 25 mm or the total length of the apparatus being between 200 and 1200 mm, as taught by Jackson into the invention disclosed by Bosko, to provide a device having a size and shape adequate for massaging as directed by a physician/therapist.

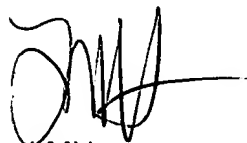
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M. Hamilton whose telephone number is (571) 272-6743. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LMH

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